

Defendants are not entitled to be shielded from liability in their individual capacities, or official capacities

Section 1983 Allow damages to be assessed against any "person" who "under color of state law" deprives someone of federal constitutional rights. All Government employees are "persons" under Section 1983 and can be sued for everything they do at work that violates clearly established constitutional rights Hader v. Melo, 502 U.S. 91 (1991). Additionally plaintiff seeks injunctive relief requiring prison officials to use available inmate classification information and procedures to predict compatibility of incoming inmates for double celling because current random assignment of inmates substantially increase risk of violence in violation of the Eighth Amendment (ID D.I. 9 and D.I. 2) #18. Requesting an injunction, or declaratory judgment, state officials can be sued in their official capacities. Will v. Michigan Department of State Police. The Grant of injunctive relief is an 'extraordinary remedy, which should be granted only in limited circumstances.' Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989) (Quoting Franks One Truck Center, Inc. v. General Motors Corp., 847 F.2d 200, 102 (3d Cir. 1988)). In ruling on a preliminary injunction, this court must consider 1) The Likelihood of success on the merits 2) The extent to which the plaintiff is being irreparably harmed by the conduct complained of 3) The extent to which the defendant will suffer irreparable harm if the requested relief is granted; and 4) The public interest. See Clear Creek Action v. York, 57 F.3d 328, 331 (3d Cir. 1995). An injunction should only issue if all four factors favor injunctive relief see S.R. Corp. v. Jiffy Lube Intern., Inc., 968 F.2d 371, 374 (3d Cir. 1992)

As the Supreme Court has explained, Qualified immunity seek to ensure that Defendant Reasonable can anticipate when their conduct may give rise to liability, by attaching liability only if the contours of the right (violated) are sufficiently clear that a reasonable official would understand that what he is doing violates that right United States v. Lanier 520 U.S. 259, 270 (1997) this is not to say, that an official's action is protected by qualified immunity, unless the very action in question has been held unlawful; but it is to say that in the light of existing law the unlawfulness must be apparent. Anderson v. Garmen, 483 U.S. 635, 640 (1987).

The instant case. It was apparent by January 20, 04. that the Eighth Amendment prohibited Defendant from subjecting the plaintiff to Severe Emotional Distress, and mental anguish, fear, shock humiliation or mortification and cruel and unusual punishment by being deliberately indifferent to a substantial risk of serious harm to a inmate thus being Deliberately indifferent to inmates health and safety in violation of the Eighth Amendment. Moreover plaintiff claim against Defendants in their Individual capacities made clear (ID. DE. 18 At 5). have gone undisputed Thus Defendant's claim of Qualified Immunity must fail and The plaintiff undisputed claim against Defendants in their Individual capacities must succeed. Because they waive this Defence by failing to assert it in their motion to dismiss.

Plaintiff (claims he was denied a minimal civilized measures of life's necessities "reasonable safety")

To act with deliberate indifference, a state actor must "know[] of and disregard[] an excessive risk to [the victim's] health or safety." EWOLSKI v. City of Brunswick, 257 F.3d 492, 513 (6th Cir. 2002) (quoting Farmer v. Brennan, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)) (internal quotation omitted). The state actor's actual knowledge is critical to the inquiry. A state actor's failure to alleviate "a significant risk that he should have perceived but did not," while "no cause for commendation," does not rise to the level of deliberate indifference. Farmer, 511 U.S. at 837, 114 S.Ct. 1970.

Under the first prong, the Defendant's engaged in constitutionally impermissible conduct. See, e.g., Saucier, 533 U.S. at 201, 121 S.Ct. 2151. Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? (if no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity."); accord Roe v. Tex. Dept. of Protective and Regulation Serv., 299 F.3d 395, 2002 WL 1575250, at *3 (5th Cir. July 17, 2002). Prison condition may be "repressive and even harsh" Rhodes, Supra 452 U.S., at 347, 101 S.Ct. at 2399, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objective," Hudson v. Palmer, Supra 468 U.S., at 548, 104 S.Ct. at 3211 (Stevens, J. concurring with in part and dissenting in part). Any more than it squares with "evolving standard of decency," Estelle, *834 Supra, 429 U.S., at 102, 97 S.Ct. at 240 (quoting Trop v. Dulles, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 22 L.Ed.2d 630 (1958)) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offences against society." Rhodes Supra. 452 U.S., at 347 101 S.Ct.; at 2399

under the requisites for injunctive relief plaintiff has demonstrated a likelihood to succeed on the merits

Plaintiff concedes in his complaint that he was placed
 in a cell with a violent inmate for over three months,
 thereby failing to protect him from an assault by Anthony
 Coffield. The Plaintiff was assaulted inside B-C-10 on 6-6-04.
 Plaintiff requested to be relocated to another cell, due
 to threats of bodily harm and other persecution, but
 the request was unanswered by the Defendant and
 as a result, because plaintiff was not moved he
 suffered a permanent injury. The threats on plaintiff
 well-being were received and relayed back to plaintiff
 concerning protection from assault made obvious to
 Defendants by way of actual knowledge. Defendant
 did absolutely nothing but perfunctorily deny plaintiff
 request without any investigation. "fact that Acting Deputy
 warden re-opened plaintiff request for protection and
 order an investigation in regard to my letter to the
 demonstrator 'no initial investigation was conducted,'"
 on the face of the complaint, plaintiff was shown
 a deliberate indifference on the part of Defendant's
 to substantial risk of serious harm to an inmate

Conclusion

2. The Eighth Amendment to the United States Constitution guarantees that no prisoner shall be subjected to cruel and unusual punishment. The Constitutional prohibition against cruel and unusual punishment not only prohibits certain kinds of physical punishment, such as torture, but embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency. *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 47 AF2d 103. The Eighth Amendment requires that prison officials, under the circumstances demonstrated herein, must not be deliberately indifferent to a prisoner's need for protection against physical assault. A prisoner who is deprived of such protection because of a prison official's deliberate indifference to a physical assault has suffered a violation of his constitutional rights as guaranteed by the Eighth Amendment.

3. To be cruel and unusual punishment, conduct which does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interest or safety. It is obduracy or wantonness, not inadvertence or error in good faith, that characterizes the conduct prohibited by the cruel and unusual punishment clause. *Whitley v. Albers*, 475 U.S. 312, 106 S.Ct. 1078, 47 AF2d 319.

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James Hall Pro Se
1181 Parkside Rd. S.W.
Del 19977

12-15-06

Date:

EXHIBIT A

Direct
business

Declaration under penalty of perjury of
Charles Daley, 472644, being competent to make
this declaration and having personal knowledge of the
matters stated therein, declares pursuant to 28 U.S.C. § 1786:

1. I was James's next door neighbor at the time
of the incident. I heard him and his celly get
into another of their many arguments around
11:00 AM one morning. This argument was different
because James's celly started to threaten him
with violence. I did hear a fight begin
and after a few minutes the doors opened
for lunch. James's celly then came out of
the cell and started a bigger fight that
was muslim's verses non-muslim's. Guys
had mop fingers and brooms. The police
eventually saw what was going on after
a good five minutes of fighting. They
took all muslims to the SHU and the
incident was over.

9-29-05

Declaration under penalty of perjury of
Ulyses S. Davis Jr, 00229889, being competent to make
this declaration and having personal knowledge of the matter
stated therein, declares pursuant to 28 U.S.C § 1746:

- 1 I became friendly with Mr. James Hall after playing a few games of chess with him and leading up to the day he got into a fight with his cell mate we talked about how his cell mate kept trying to make Mr. Hall fight him and as we talked about what he could do about the matter I said he should use the chain of command to be moved out of the cell because his hand was hurt and he did so, but they would not move him and in June he got into a fight with his cell mate and his tooth was knocked out and a few other guys tried to jump on him and his cell mate punched another inmate in the face as well before his cell mate was put in the SHU.

Ulyses S. Davis Jr

Declaration under penalty of Perjury

#277704

Glen Smith, being compelled to make This Declaration
and having personal knowledge of the matters stated herein, declares
Pursuant To 28 U.S.C. § 1746

7.) On the day the fight happen Jimmy was angry & upset at his cellmate.
He stated that he was being givin a tot of hasside & ~~prob~~ problems
at lunch time that day. Jimmy was attaked by his cellmate. I herd
the fight & wittnessed the end and herd the cellmate say yea I got that
faggit.

Pursuant To 28 U.S.C. § 1746 I declare under penalty of perjury
that the foregoing is True and correct Executed on 9/30/05

PK

20 Causid 19 12/1/9972

Declaration under penalty of perjury of James Hall,
 00167581, being competent to make this declaration and
 having personal knowledge of the matter stated herein, declares
 pursuant to 28 U.S.C. § 1746:

On 3-30-04 my cellie Anthony Coffield was
 taunting me, and eventually physical assaulted me (by
 pointing his finger into my forehead in a aggressive manner
 in anger inmate Coffield was intimidating me trying
 to get me to fight him. Once he even spit in my face
 The door open and I went straight to the tier
 officer, in compliance with the rule (The chain of command).
 Affiant was directed by C/O Wilson to go talk to
 (M/HU) Sgt Sullivan and asked to be moved because of
 the confrontation that just occurred Affiant was told
 by Sgt Sullivan "Is it life or death, in keeping it real
 you have to fight or sign on. ID. commitment Exhibit

DECLARATION under penalty of perjury of
 James Hall, 00167581, Being competent to make this
 declaration and having personal knowledge of the matters
 stated therein, declares pursuant To 28 U.S.C. § 1746:

Affiant asserts the following:

On 6-6-04 I was violently attacked by Anthony Caffield and
 other members of a collective group (I.E. Muslims) After the attack
 Affiant and another Inmate was escorted out of (MTH) B-Tier into a
 Corridor where Affiant was questioned by Lt. Boon in regards to the incident
 that just taken place. Affiant confronted Lt. Boon about matters forwarded
 to him from Clyde D. Sagers in regard to the previously well documented
 threats on Affiant person. [Lt. Boon stated, I needed ya'll to fight in order to
 move Affiant's Aggressor]. Moment before this admission Affiant "In Discuss"
 explained to Lt. Boon that, I wrote Major Holman and all ya'll telling
 ya'll that my cellie was threatening Baticy harm to me everyday and now
 I'm starting here Bleeding and he knocked my damn tooth out and all
 his muslim boy's jumped me and my friend help get them off me
 if ya'll would have moved me like I asked ya'll too none of
 this (choosen words) would of happened. There was two
 other officer's present during this interview on officer's Name I Sgt
 Abernathy other officer Name Unknown at this time

James Hall

12-5-05

EXHIBIT B



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
OFFICE OF THE DEPUTY WARDEN
DELAWARE CORRECTIONAL CENTER
1181 Paddock Road
SMYRNA, DELAWARE 19977
Telephone: (302) 653-9261
Fax: (302) 659-6668

Clyde D. Sagers

MEMORANDUM

TO: IM James Hall
SBI# 167581
MHU 23 BL10B

FROM: Clyde D. Sagers
Acting Deputy Warden I

DATE: May 17, 2004

RE: Letter

A handwritten signature in black ink, appearing to read "Capt. Sagers", with a large checkmark-like flourish at the end.

I have received your letter in reference to your cellmate. I have forwarded your letter to Lieutenant Boone for his investigation.

LAN/dc

Attachment

cc: Lt. Boone
Inmate File

Certificate of Service

I, JAMES HALL, hereby certify that I have served a true
and correct cop(ies) of the attached: (2) Plaintiff's reply to Defendant's
Motion to Dismiss upon the following
parties/person (s):

TO: Mrs Lisa Barba
820 N. French Street, 6th
Floor Washington, DC 20001

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United
States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 15 day of December, 2005

James Hall

JAMES HALL, pro se W-L-9
DELAWARE CORRECTIONAL CENTER
1181 DELAWARE BLVD. SMYRNA, DE
19977

Clerk of the Court
United States District Court
844 N. King Street, Locker box 18
Wilmington, Del 19801

